

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4664 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
Nos. 1 to 5 No.

HANIFSHA MAHMADSHA FAKIR

Versus

DIST.MAGISTRATE

Appearance:

MR.ANIL S.DAVE FOR MS SUBHADRA G PATEL for Petitioner
MR.NEEGAM SHUKLA,AGP for Respondents.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 08/11/96

ORAL JUDGEMENT

This Special Civil Application is directed against the order dated 23.4.1996 passed by the District Magistrate, Rajkot whereby the petitioner has been detained under the provisions of Gujarat Prevention of Antisocial Activities Act, 1985. The detention order was executed on 26.4.1996 and since then the petitioner is

under detention lodged at Central Prison, Ahmedabad.

Rule returnable for 12.8.1996 was issued. Affidavit-in-reply was filed on behalf of the District Magistrate, Rajkot on 25.10.1996. Thereafter an amendment was made in the petition including the ground 10A with regard to delay in deciding the representation. The respondents were granted repeated opportunities to file reply to the amendment. Despite two opportunities no reply has been filed and no verbal explanation has been tendered. Mr.Neegam Shukla, learned AGP submitted that in view of the decision rendered by the Supreme Court in AIR 1974 SC Pg.1336 and Judgment Today 1993 (3) SC Pg.666 the case of breach of public order against the petitioner is clearly made out and therefore ;the petitioner is not entitled to be released and the detention order must be held to be valid. Mr.Dave for Mrs. Patel appearing for the petitioner has contended that in the instant case the detention order dated 23.4.1996 has been approved by the State Government on 2.5.1996. The petitioner had submitted his representation on 4.7.1996 and this representation was received by the Detaining Authority on 7.7.1996 but the same was decided on 18.7.1996 and for this period no explanation has been given by the respondents as to why the petitioner's representation was not dealt with for this period intervening 7.7.1996 and 18.7.1996. Mr.Dave has placed reliance on AIR 1994 SC Pg.1496 and 1994(2) GLH (UJ) Pg.10 based on Navalshankar Vs. State of Gujarat. Whereas no explanation whatsoever has been rendered by the respondents for the period 4.7.1996 to 18.7.1996. Not even a word has been said why this period was taken, I find it a case of unexplained delay in the facts of this case. Thus it is found that the petitioner's right of making representation under Article 22(5) has been violated and the detention order deserves to be quashed and set aside on this ground alone.

Accordingly this Special Civil Application is allowed. The impugned detention order dated 23.4.1996 passed by the District Magistrate, Rajkot is hereby quashed and set aside. The respondents are directed to release the petitioner and set him at liberty forthwith, if not required in any other case. Rule is made absolute.
